Association of Bank Officers Peninsular Malaysia v Menteri Sumber Manusia Malaysia & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-01-186 OF 1995
SHAIK DAUD, SITI NORMA YAAKOB AND MOKHTAR SIDIN JJCA
22 NOVEMBER 1996

Labour Law *— Industrial dispute — Dispute between two trade unions — Whether such dispute amounts to a dispute under s 9(1A) — Whether dispute envisaged in that section must necessarily be between employees and employer — Whether Director General of Industrial Relations and Minister had jurisdiction to entertain representation on such dispute — Industrial Relations Act 1967 s 9(1A)*

Both the appellant and the third respondent were trade unions opened to different groups of bank employees. On or about 1 June 1990, the second respondent, a commercial bank, had upgraded/promoted its 'tellers' and 'receptionists' to the executive category known as 'internal officers'. As a result of this exercise, a majority of these internal officers became eligible to be members of the appellant, and eligible to be covered by the scope of the collective agreement/award between the appellant and the second respondent. Before the exercise, these tellers and receptionists were eligible to be members of the third respondent.

The appellant then made representation to the Director General of Industrial Relations ('the DGIR') under s 9(1A) of the Industrial Relations Act 1967 ('the Act'). The DGIR referred the matter to the first repondent, ie the Minister of Manpower ('the Minister') who made an order ('the order') pertaining the matter. The appellant subsequently applied for the issue of certiorari against the order and an order of mandamus against the Minister to exercise his statutory public duty under s 9 of the Act. The High Court dismissed the application. The appellant appealed.

Held, allowing the appeal:

The condition precedent for recourse to s 9(1A) is that a dispute had arisen as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity. The dispute envisaged in that section must necessarily be between the employees and the bank.

In this case, at all material time there was no evidence of any such dispute. What seemed to be a dispute here was between two trade unions, the appellant and the third respondent, each claiming to have a superior right to represent the internal officers. In other words, no dispute had arisen between the second respondent and those of its employees that were affected by the upgrading/promotion exercise and, as such, these could not have been recourse to s 9(1A) of the Act and no representation ought to have been referred to the DGIR under these circumstances. The DGIR, therefore, had no

jurisdiction to entertain the so called representation from either the appellant or the third respondent. Both the appellant and the third respondent had no locus standi to refer the matter to the DGIR under s 9(1A). Flowing from that, the DGIR has no jurisdiction to entertain the reference and in turn to notify the first respondent, the Minister, under s 9(4C). In the light of this, it was clear the first respondent had no threshold jurisdiction to entertain such a notification under s 9(5) (see p 280D–G).

[Bahasa Malaysia summary

Kedua-dua perayu dan penentang ketiga adalah kesatuan sekerja yang dibuka untuk kumpulan pekerja-pekerja bank yang berlainan. Pada atau sekitar 1 Jun 1990, penentang kedua, sebuah bank komersil, telah meningkatkan taraf/menaikkan pangkat 'juruwang' dan 'penyambut tetamu' kepada kategori eksekutif dikenali sebagai 'pegawai dalaman'. Akibat daripada pelaksanaan ini, majoriti daripada pegawai dalaman ini mendapat kelayakan untuk menjadi ahli perayu, dan layak untuk dilindungi oleh skop perjanjian kolektif/award di antara perayu dan penentang kedua. Sebelum pelaksanaan itu, juruwang dan penyambut tetamu ini adalah layak untuk menjadi ahli kepada penentang ketiga.

Perayu kemudiannya telah membuat representasi kepada Ketua Pengarah Perhubungan Awam ('KPPA') di bawah s 9(1A) Akta Perhubungan Perindustrian 1967 ('Akta tersebut'). KPPA merujuk perkara itu kepada penentang pertama, iaitu Menteri Sumber Manusia ('Menteri tersebut') yang membuat perintah ('perintah tersebut') berkenaan dengan perkara tersebut. Perayu kemudiannya memohon untuk pengeluaran certiorari terhadap perintah tersebut dan perintah mandamus terhadap Menteri tersebut untuk melaksanakan kewajipan awam statutorinya di bawah s 9 Akta tersebut. Mahkamah Tinggi menolak permohonan itu. Perayu membuat rayuan.

Diputuskan, membenarkan rayuan:

Syarat terdahulu untuk menggunakan s 9(1A) adalah bahawa suatu pertikaian telah timbul berkaitan dengan sama ada mana-mana pekerja atau pekerja-pekerja digaji dalam bidang tugas pengurusan, eksekutif, kerahsiaan atau keselamatan. Pertikaian yang digambarkan dalam seksyen itu semestinyalah di antara pekerja-pekerja dan bank itu.

Dalam kes ini, pada semua masa material tiada bukti bahawa terdapat pertikaian yang sedemikian. Apa yang menjadi pertikaian di sini adalah di antara dua kesatuan sekerja, perayu dan penentang ketiga, masing-masing menuntut mempunyai hak yang lebih tinggi untuk mewakili pegawai dalaman itu. Dalam lain perkataan, tiada pertikaian telah timbul di antara penentang kedua dan pekerja-pekerjanya yang dijejaskan oleh pelaksanaan peningkatan taraf/penaikan pangkat dan, dengan yang demikian, tidak mungkin s 9(1A) Akta tersebut digunakan dan tiada representasi sepatutnya dirujuk kepada KPPA di bawah keadaan-keadaan ini. KPPA, dengan itu, tidak mempunyai bidang kuasa untuk melayan apa yang dikatakan

representasi daripada perayu atau penentang ketiga. Kedua-dua perayu dan penentang ketiga tidak mempunyai locus standi untuk merujuk perkara itu kepada KPPA di bawah s 9(1A). Ekoran daripada itu, KPPA tidak mempunyai bidang kuasa untuk melayan rujukan itu dan kemudiannya memberitahu penentang pertama, Menteri tersebut, di bawah s 9(4C). Memandangkan ini, adalah jelas bahawa penentang pertama tidak mempunyai bidang kuasa ambang untuk melayan pemberitahuan sedemikian di bawah s 9(5) (lihat ms 280D–G).]

Notes

For cases on industrial dispute, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 994–1003.

Legislation referred to

Industrial Relations Act 1967 ss 9, 9(1A), 9(4C), 9(5)

Appeal from: Originating Motion No R2–25–28 of 1995 (High Court, Kuala Lumpur)

B Lobo (*Lobo & Associates*) for the appellant.

Haliza Aini bte Othman, *S Nantha Balan* and *T Mahalingam* (*Genga Maha Wong & Co*) for the first, second and third respondents respectively.

Shaik Daud JCA (delivering the judgment of the court): This appeal is against the decision of the High Court which had, on 20 November 1995 refused an application for the issue of certiorari against an order made by the Minister of Manpower Malaysia on 16 February 1995. The High Court had also refused an application to issue an order of mandamus against the said Minister to exercise his statutory public duty under s 9 of the Industrial Relations Act 1967 ('the 1967 Act').

The appellant herein is a trade union whose membership is open to all Class II officers and internal officers in the executive category, in commercial banks in Peninsular Malaysia. The second respondent is a commercial bank whilst the third respondent is also a trade union whose membership is open to all workmen other than those employed in a managerial, executive, confidential or security capacity in commercial banks in Peninsular Malaysia.

On or about 1 June 1990, the second respondent had upgraded/promoted 'tellers' and 'receptionists' to the executive category known as 'internal officers'. As a result of this exercise, a majority of these internal officers became eligible to be members of the appellant, and eligible to be covered by the scope of the collective agreement/award between the appellant and the second respondent. Before the exercise, these tellers and receptionists were eligible to be members of the third respondent.

As a result of the exercise, a representation as to the recognition and scope of representation over the internal officers, was made to the Director General of Industrial Relations ('the DGIR') under s 9(1A) of the 1967 Act. As to which party made the representation to the DGIR does not

seem to be clear at first. The appellant contended that it was the third respondent which made the representation but on our perusal of the records, it would appear that the DGIR acted upon a letter dated 17 August 1994, sent by the appellant to him. The DGIR in reply to that letter enquired from the appellant as to why they thought that the internal officers ought to be represented by them. From this it would seem that it was the appellant which had made the representation to the DGIR.

Now s 9(1A) of the 1967 Act provides:

> Any dispute arising at any time, whether before or after recognition has been accorded, as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity may be referred to the Director General by a trade union of workmen or by an employer or by a trade union of the employers.

From the above provisions, it seems clear that in order for any party mentioned therein to have recourse to s 9(1A), the condition precedent is that a dispute had arisen as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity. From our perusal of the records, at all material time there was no evidence of any such dispute. The dispute envisaged in that section must necessarily be between the employees and the bank. What seems to be a dispute here is between two trade unions, the appellant and the third respondent, into each claiming to have a superior right to represent the internal officers.

We stress again that no dispute had arisen between the second respondent and those of its employees that were affected by the upgrading/promotion exercise and, as such, these could not have been recourse to s 9(1A) of the 1967 Act and no representation ought to have been referred to the DGIR under these circumstances. The DGIR, therefore, had no jurisdiction to entertain the so called representation from either the appellant or the third respondent. We are of the view that both, the appellant and the third respondent, have no locus standi to refer the matter to the DGIR under s 9(1A). Flowing from that, the DGIR has no jurisdiction to entertain the reference and in turn to notify the first respondent, the Minister, under s 9(4C). In the light of this, we hold that the first respondent had no threshold jurisdiction to entertain such a notification under s 9(5).

We, therefore, allowed the appeal, issued certiorari to quash the decision of the first respondent. The application for mandamus was however rejected. We declined to order costs to the appellant for reasons stated earlier, that it was the appellant which made the representation to the DGIR in the first place. Accordingly, the deposit must be refunded to the appellant.

Appeal allowed.

Reported by Loo Lai Mee